

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 361 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANIBEN WD/O RAMSINH PALABHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 361 of 2003
MR TS NANAVATI for Petitioner No. 1
MR PANCHOLI, A.P.P. for Respondent No. 1,7
DS AFF.NOT FILED (R) for Respondent No. 2-6

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 17/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Petitioner Maniben, widow of Ramsinh Palabhai Ahir, has filed this Habeas Corpus Petition under Article 226 of the Constitution of India and prayed that the respondents No.2 to 6 be directed to produce the body of her son Ramesh Ramsinh Ahir before this Court. One more prayer is made in this petition is that the respondent No.7 be directed to institute appropriate inquiry/ investigation in respect of the illegal detention of Ramesh Ramsinh Ahir in custody of the Respondents No.2 to 6 and to produce a report in respect thereof before this Court within the time prescribed as deemed fit by this Court.

2. By way of interim relief it is prayed in Para : 8(B) that -

"Pending admission and/or final disposal the respondents No.7 be called upon to take into custody all relevant documents, arrest registers and other documents including intimations of arrest to control room, District and State Head Quarters, intimation of arrest to next of akin, friend and/or family member of Ramesh Ramsinh Ahir, including Police Station Diary, etc., that are required to be maintained by the Local Crime Branch Police Station, Lal Bungalow, Near Court, Jamnagar in relation to an arrest of an accused and to produce the same before this Honourable Court."

3. In response to the Notice of Rule issued by this Court Shri Rambhai, son of Vasarambhai Karathia, Head Constable, Local Crime Branch, Jamnagar, has filed Affidavit on his behalf as well as on behalf of respondents No.2 to 6.

4. Learned Counsel Shri Nanavati, appearing for the petitioner, has also filed Affidavit of Shri Ramesh Ramsinhbhai Ahir, son of petitioner Maniben Ramsinh Ahir, who is also personally present before the Court, through his learned Counsel Shri Nanavati.

5. Shri Nanavati, learned Counsel for the petitioner, submitted that Ramesh, son of the petitioner, was released on 13.4.2003. In view of this, petition filed by the petitioner, seeking issuance of writ of Habeas Corpus to produce her son Ramesh, by the respondents No.2 to 6, does not survive any more and accordingly it was required to be dismissed.

However, learned Counsel Shri Nanavati for the petitioner vehemently submitted that detention of Ramesh,

son of the petitioner, was illegal, therefore, he may be allowed to initiate necessary proceeding against the respondents No.2 to 6 before appropriate forum.

6. Learned A.P.P. Shri Pancholi, appearing for the respondent, however, submitted that sole purpose of filing this petition was to prevent the Police Officer from discharging their official duty and to carry on further investigation in connection with serious offence in "FERA" in which Ramesh @ Kishan, son of the petitioner was involved. He submitted that Ramesh @ Kishan Ramsinh Ahir had earlier filed Special Criminal Application No.586 of 2001 before this Court in person as "Kishan Ahir" way back in July 2001. Though he had given an undertaking that he will remove the office objection within 14 days, he has not removed the same and allowed the matter to lie on dormant file. He submitted that this material fact of filing of petition by Kishan Ramsingbhai Ahir, son of the petitioner, has been deliberately suppressed by her mother in this petition. Not only that, Kishan Ramsingbhai Ahir has also tried to misled this Court by filing petition i.e. Special Criminal Application No.586 of 2001 in the name of "Kishan Ramsinhbhai Ahir" though he is Ramesh @ Kishan Ramsinhbhai Ahir. He, therefore, submitted that while dismissing petition the petitioner should be saddled with a heavy cost for abusing process of law. He also submitted that in a Habeas Corpus Petition a person can only pray for production of missing person. Instead of that other prayer is also made to initiate inquiry/investigation in the matter which was highly improper on the part of the petitioner. He submitted that if the petitioner had any remedy available then he can always avail the same for such relief but no orders from this Court are required in this petition.

7. In view of the aforesaid submission made by learned A.P.P. Shri Pancholi, we had asked Ramesh Ramsinhbhai Ahir, son of the petitioner, about his correct name. Initially he stated before us that his name is Ramesh, but immediately thereafter he stated that he is Ramesh alias Kishan. If it is so, then it should have been stated so in the writ petition i.e. Special Criminal Application No.586 of 2001 filed before this Court. This speaks volumes about the conduct of both Ramesh alias Kishan and his mother - the present petitioner.

8. From the above, one thing is clear that for obvious reason the most important and vital fact of filing Special Criminal Application No.586 of 2001 by

Kishan Ramsingbhai Ahir, son of the petitioner, has been deliberately not stated in the petition. In this petition, it is stated that her son Ramesh was illegally detained by the respondents No.2 to 6. If he is known as Ramesh @ Kishan, then it should have been stated so. Learned A.P.P. Shri Pancholi had also shown the relevant statements recorded by the Police during investigation of the case including three statements of Ramesh @ Kishan, son of the petitioner, recorded on 7th, 8th and 9th April, 2003. From the said statement, Shri Pancholi, ld. A.P.P. submitted that Ramesh was involved in an offence under "FERA" where lacs of Pounds (British currency) were illegally transferred to this Country. However, we would not like to express any opinion on this point, because it is a matter of investigation by the Police.

Shri Nanavati for the petitioner submitted that this petition was filed by Maniben, mother of Ramesh Kishan and she may not be aware about filing of Special Criminal Application No.586 of 2001 by her son on a different name of Kishan before this Court, therefore, this should not be go against the petitioner. We are not prepared to accept this submission of Shri Nanavati. On facts of this case it is difficult for us to believe that the petitioner was not knowing about the petition filed by her son before this Court. Even assuming for the sake of argument that she was not aware about filing of such petition by her son then also she should have stated in her petition the correct name of her son. The only legitimate inference can be drawn in this case is that the petitioner has filed this petition with an ulterior motive and thereby abuse the process of law.

9. Considering the facts and circumstances of the case we are of the clear opinion that the petitioner has not come before this Court with clean hands and tried to abuse the process of law and only with a view to bring undue pressure on the Police such petition was filed. Therefore, this petition is dismissed with special cost of Rs.10,000/- Rule discharged. One month time is given to the petitioner to pay the costs.

(B.J.Shethna, J.)

Date : April 17, 2003

(A. L. Dave, J.)

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